

AM3134
LB 1303
NPN-03-14

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AMENDMENTS TO LB 1303

1 1. Strike the original sections and insert the following
2 new sections:

3 "Section 1. Section 29-3601, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 29-3601. The Legislature finds that pretrial diversion
6 offers persons charged with criminal offenses and minor traffic
7 violations an alternative to traditional criminal justice or
8 juvenile justice proceedings in that: (1) It permits participation
9 by the accused only on a voluntary basis; (2) the accused has
10 access to counsel prior to a decision to participate; (3) it occurs
11 prior to an adjudication but after arrest and a decision has been
12 made by the prosecutor that the offense will support criminal
13 charges; and (4) it results in dismissal of charges, or its
14 equivalent, if the individual successfully completes the diversion
15 process.

16 Sec. 2. Section 29-3602, Revised Statutes Supplement,
17 2000, is amended to read:

18 29-3602. The county attorney of any county may establish
19 a pretrial diversion program with the concurrence of the county
20 board. Any city attorney may establish a pretrial diversion
21 program with the concurrence of the governing body of the city.
22 Such programs shall be established pursuant to section 29-3603 and
23 sections 5 to 9 of this act.

24 Sec. 3. Section 29-3603, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-3603. A pretrial diversion plan for criminal offenses
3 shall include, but not be limited to:

4 (1) Formal eligibility guidelines established following
5 consultation with criminal justice officials and program
6 representatives. The guidelines shall be written and made
7 available and routinely disseminated to all interested parties;

8 (2) A maximum time limit for any defendant's
9 participation in a diversion program, beyond which no defendant
10 shall be required or permitted to participate. Such maximum term
11 shall be long enough to effect sufficient change in participants to
12 deter them from criminal activity, but not so long as to prejudice
13 the prosecution or defense of the case should the participant be
14 returned to the ordinary course of prosecution;

15 (3) The opportunity for eligible defendants to review,
16 with their counsel present, a copy of general diversion program
17 requirements including average program duration and possible
18 outcome, prior to making the decision to enter a diversion program;

19 (4) Dismissal of the diverted case upon completion of the
20 program;

21 (5) A provision that participants shall be able to
22 withdraw at any time before the program is completed and be
23 remanded to the court process without prejudice to them during the
24 ordinary course of prosecution;

25 (6) Enrollment shall not be conditioned on a plea of
26 guilty; and

27 (7) Defendants who are denied enrollment in a diversion

AM3134
LB 1303
NPN-03-14

AM3134
LB 1303
NPN-03-14

1 program shall be afforded an administrative review of the decision
2 and written reasons for denial.

3 Sec. 4. Section 29-3604, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 29-3604. No person charged with a violation of section
6 60-6,196 or 60-6,197 shall be eligible for pretrial diversion under
7 a program established pursuant to sections 29-3601 to 29-3603 and
8 sections 5 to 9 of this act.

9 Sec. 5. For purposes of sections 6 to 9 of this act:

10 (1) Department means the Department of Motor Vehicles;
11 and

12 (2) Minor traffic violation does not include leaving the
13 scene of an accident, sections 60-696 to 60-698, driving under the
14 influence of alcoholic liquor or drugs, sections 60-4,164,
15 60-6,196, and 60-6,211.01, reckless driving or willful reckless
16 driving, sections 60-6,213 and 60-6,214, participating in a speed
17 competition, section 60-6,195, operating a motor vehicle to avoid
18 arrest, section 28-905, refusing a breath or blood test, sections
19 60-4,164, 60-6,197, and 60-6,211.02, driving on a suspended or
20 revoked operator's license, sections 60-4,107 to 60-4,110, speeding
21 twenty or more miles per hour over the speed limit, operating a
22 motor vehicle without insurance or other financial responsibility
23 in violation of the Motor Vehicle Safety Responsibility Act,
24 operating a motor vehicle that is not registered, any injury
25 accident, or any violation which is classified as a misdemeanor or
26 a felony.

27 Sec. 6. (1) A pretrial diversion plan for minor traffic

1 violations shall consist of a driver's safety training program.

2 (2) A driver's safety training program shall:

3 (a) Provide a curriculum of driver's safety training, as
4 approved by the department, which is designed to educate persons
5 committing minor traffic violations and to deter future violations;
6 and

7 (b) Require payment of a fee approved by the department
8 which is a reasonable and appropriate cost of the presentation of
9 the program. A jurisdiction shall charge a uniform fee for
10 participation in a driver's safety training program regardless of
11 the traffic violation for which the applicant was cited. Fees
12 received by a jurisdiction offering a driver's safety training
13 program may be utilized by such jurisdiction to pay for the costs
14 of administering and operating such program, to promote driver
15 safety, and to pay for the costs of administering and operating
16 other safety and educational programs within such jurisdiction.

17 (3) The program administrator of each driver's safety
18 training program shall keep a record of attendees and shall be
19 responsible for determining eligibility. A report of attendees at
20 all driver's safety training programs in the state shall be shared
21 only with similar programs throughout the state. All procedures
22 for sharing records of attendees among such programs shall conform
23 with the rules and regulations adopted and promulgated by the
24 department to assure that no individual takes the approved course
25 more than once within any three-year period in Nebraska. Such
26 record of attendees and any related records shall not be considered
27 a public record as defined in section 84-712.01.

AM3134
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AM3134
LB 1303
NPN-03-14

1 (4) The department shall approve the curriculum and fees
2 of each program and shall adopt and promulgate rules and
3 regulations governing such programs, including guidelines for fees,
4 curriculum, and instructor certification.

5 Sec. 7. Any organization or governmental entity desiring
6 to offer a driver's safety training program shall first obtain a
7 certificate from the department, to be renewed annually. The
8 certificate fee and the annual renewal fee shall each be fifty
9 dollars. The fee collected by the department from the organization
10 or governmental entity shall be remitted to the State Treasurer for
11 credit to the Department of Motor Vehicles Cash Fund.

12 Sec. 8. Any driver holding a commercial driver's license
13 issued pursuant to sections 60-4,138 to 60-4,172 shall not be
14 eligible to participate in a program under sections 5 to 9 of this
15 act.

16 Sec. 9. Sections 5 to 9 of this act shall not apply to
17 programs of pretrial diversion for offenses other than minor
18 traffic violations.

19 Sec. 10. This act becomes operative on January 1, 2003.

20 Sec. 11. Original sections 29-3601, 29-3603, and
21 29-3604, Reissue Revised Statutes of Nebraska, and section 29-3602,
22 Revised Statutes Supplement, 2000, are repealed."